

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Ray C. Schrock, P.C.
David J. Lender
Paul R. Genender
Jared R. Friedmann
Sunny Singh

*Attorneys for Debtors
and Debtors in Possession*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:	x
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Chapter 11
	:	Case No. 18-23538 (RDD)
Debtors.	:	(Jointly Administered)

**SECOND SUPPLEMENTAL DECLARATION OF MOHSIN Y.
MEGHJI IN SUPPORT OF THE DEBTORS' MOTION TO ENFORCE**

I, Mohsin Meghji, make this declaration under 28 U.S.C. § 1746:

1. I submit this declaration (“**Second Supplemental Declaration**”) in support of the *Debtors’ Supplemental Memorandum of Law in Further Support of Their Motion to Enforce the Automatic Stay (“Supplemental Response”)*, filed concurrently with this Supplemental Declaration, and as a supplement to the *Declaration of Mohsin Y. Meghji in Support of Debtors’ (I) Motion to (A) Enforce Asset Purchase Agreement and Automatic Stay Against Transform Holdco LLC and (B) Compel Turnover of Estate Property, and (II) Response to Transform Holdco LLC’s Motion to Assign Matter to Mediation [ECF No. 2797]* (“**Declaration**”), and the

Supplemental Declaration of Mohsin Y. Meghji in Support of the Debtors' Motion to Enforce [ECF No. 2914] (the “**Supplemental Declaration**”).¹

2. I am the Chief Restructuring Officer (“CRO”) of the Debtors² and the Managing Partner of M-III Advisory Partners, LP (“M-III”).³ Except as otherwise indicated, all statements in this Second Supplemental Declaration are based upon my personal knowledge of the Debtors’ pre-Closing operations and finances gleaned during the course of my engagement with the Debtors; my discussions with the Debtors’ senior management, other members of the M-III team, and the Debtors’ other advisors; my review of relevant documents; and my views based upon my experience. If called to testify, I would testify competently to each of the facts set forth in this Second Supplemental Declaration. I am authorized to submit this Second Supplemental Declaration on behalf of M-III for the Debtors.

3. Prior to the Closing, the Debtors had sought the release of the First Data Reserve Account and had contemplated using those funds in connection with paying down the DIP

¹ All capitalized terms not otherwise defined in this Second Supplemental Declaration shall have the meanings prescribed to them in the Declaration, the Supplemental Declaration, or the Supplemental Response as applicable.

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

³ Additional information regarding my background, including the events leading up to the Debtors’ Motion to Enforce, can be found in the Declaration, which is fully incorporated in this Second Supplemental Declaration by reference.

to a level of \$850 million, which was a closing condition that the Debtors had to meet pursuant to § 10.10 of the APA. However, despite repeated requests from the Debtors, the Buyer refused to provide First Data with the necessary financial information. This is the same type of information that the Debtors had, prior to the bankruptcy filing, regularly provided both pursuant to the First Data Agreement and in the ordinary course of business. And this information likely would have made the First Data Reserve Account immediately payable. *See Supplemental Declaration ¶ 5.*

4. On or about February 3, 2019, more than a week before Closing, the Debtors abandoned their plan to use the Reserves to meet the DIP requirement. The Debtors then advised the Buyer that the \$35 million of Reserve Accounts would be included as part of the aggregate Credit Card Accounts Receivable delivered to Buyer at Closing. Attached hereto as **Exhibit A**, is a true and correct copy of the February 3, 2019 Transform Transaction – Weekly Tracking Presentation that was provided to the Buyer’s financial advisors. The Buyer was made aware that these proceeds were included in assets the Debtors were delivering under § 10.9 during a phone call on February 5, 2019, and the Reserve Accounts were included in the Final Inventory and Receivables Tracker sent to Buyer at Closing. Attached hereto as **Exhibit B**, is a true and correct copy of the Final Inventory and Receivables Tracker provided to counsel for Buyer on February 10, 2019. The Debtors subsequently paid down the DIP balance with other funds.

5. As the parties moved toward Closing, the Buyer was aware that the Debtors would deliver an excess of aggregate inventory. This included \$1.557 billion in Inventory, \$60 million of Credit Card Accounts Receivable, and \$47 million of Pharmacy Receivables and Pharmacy Script Value, for an aggregate value of \$1.664 billion. The Buyer requested that the Debtors retain the excess above \$1.657 billion by taking \$7 million in prepaid inventory—rather than the oldest Credit Card Accounts Receivable to which the Debtors were entitled under the

formula in § 10.9. Attached hereto as Exhibit C, is a true and correct copy of the e-mail correspondence reflecting treatment of the excess \$7 million between counsel for Debtor and counsel for Buyer from February 10, 2019 to February 11, 2019.⁴ Despite multiple requests by the Debtors' financial advisors, the Buyer has not yet delivered the \$7 million of prepaid inventory to the Debtors.

Dated: April 8, 2019
New York, New York

By: /s/ Mohsin Y. Meghji
Mohsin Y. Meghji
Chief Restructuring Officer
Debtors and Debtors in Possession

EXHIBIT A



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Prepared at the Request of Counsel
Subject to F.R.E. 408

Transform Transaction - Weekly Tracking

February 3 2019

SEARS HOLDINGS

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Subject to F.R.E. 408**

Admin Solvency Tracker

Admin & Other Priority Claims Uses of Value							Potential Mitigating Items	Notes
Original Estimate	ESL Assumed Liabilities	Original Gap	Change in Estimates	Identified Variance	Revised Gap			
Claims								
503(b)(9)	\$ 173	\$ (139)	\$ (34)	\$ (10)	\$ (44)	\$ 5	(1)	
Accounts Payable	196	(166)	(30)	-	27	(3)		
Accrued Payroll	-	-	-	-	(39)	(39)	(2)	
Other Liability Accruals	-	-	-	-	-	-		
Severance & WARN	28	(43)	-	8	-	-		
Franchise Taxes	3	-	(3)	-	-	(3)		
Property Taxes	135	(135)	-	-	-	-		
RemainCo Winddown Costs	80	-	(80)	-	(80)	-		
ABL DIP	950	(850)	(100)	10	30	(60)	34	(4)
Company Cash Available at Close	-	-	-	-	-	27	5	
Net Projected DIP Balance	-	-	-	-	-	(33)	\$ 39	
Junior DIP	350	(350)	-	-	-	-	-	
Professional Fees	108	-	(108)	5	-	(103)	-	
Cure Costs	200	(200)	-	-	-	-	-	
Transfer Taxes (Purchase Price Deduction)	19	(19)	-	-	-	-	-	
Mechanics' Liens (Purchase Price Deduction)	4	(4)	-	-	-	-	-	
Specified Receivables Shortfall	-	-	-	-	-	-	-	
Warranty Receivable Shortfall	3	-	-	(3)	-	(3)	-	
Prepaid Inventory Shortfall	-	-	-	(49)	23	(26)	-	
UCC Release Cash Consideration	35	(35)	-	-	-	-	-	
Total	2,283	(1,941)	(355)	(39)	41	(334)	44	
Additional Value Identified								
Company Cash Available Post Close	29	-	29	12	-	41	5	
Professional Fee Carve-Out Account	108	-	108	(5)	-	103	-	
MTN Sale Proceeds	81	-	81	-	-	81	-	
U-Haul Sale Proceeds	7	-	7	-	-	7	-	
Insurance Proceeds	13	-	13	(13)	-	-	-	
SHIP Security Deposit	6	-	6	-	-	6	-	
Specified Receivables	-	-	-	-	-	-	20	
Prepaid Rent	-	-	-	-	25	25	-	
Prepaid Insurance	-	-	-	-	-	-	-	
Prepaid Marketing	-	-	-	-	-	-	-	
Other Asset Accruals	-	-	-	-	-	-	-	
GOB Inventory Post-Close	-	-	-	-	35	35	56	
Total	244	-	244	(6)	60	298	81	
Solvency / (Gap)			\$ (111)	\$ (44)	\$ 101	\$ (35)	\$ 125	

Under the revised estimates, the Company is projecting a ~(\$35mm) administrative shortfall; the Company has identified ~\$125mm of potential mitigating items

Notes:

- (1) New estimate reflects movement of \$20mm in critical vendor payments to ABL DIP; potential mitigating items reflect \$5mm in opportunity identified through the application of trapped vendor credits, and mitigation of amounts owed to 503(b)(9) claimants through identified cure
- (2) Severance paid through payroll system so accrued payroll includes ~\$8mm of January severance payments
- (3) Reduced by \$8mm to reflect January severance payments paid through payroll system
- (4) Pipeline initiatives of \$34mm relate to \$15mm of Operating Receipts, \$10mm of Operating Disbursements, and \$9mm of Amazon Inventory
- (5) Revised to reflect latest professional fee estimate
- (6) Assumes 50% collection of \$41mm overage on specified receivables
- (7) Consists of \$11mm upside to existing 80 store GOB forecast and 90% NOLV on \$50mm of inventory transferred due to delivering \$50mm excess New ABL Collateral as shown on page 3 (\$1,707mm vs \$1,657mm)

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Conditions to Close Summary

	Conditions to Close					Potential Mitigating Items	Notes
	Projected Balance at Close	Target per APA	Cushion / (Gap)	Identified Favorable Variance	Revised Cushion / (Gap)		
New ABL Collateral	\$ 1,707	\$ 1,657	\$ 50	\$ -	\$ 50	\$ 3	(1)
Specified Receivables	296	255	41	-	41	-	(A)
Warranty Receivables	51	54	(3)	-	(3)	-	(A)
Prepaid Inventory	98	147	(49)	-	(49)	-	(A) (B)
ABL DIP	940	850	(90)	30	(60)	\$ 34	(2)
Junior DIP	\$ 350	\$ 350	\$ -	\$ -	\$ -	\$ -	

Notes:

- (1) Inventory balance of \$1,597mm per SHC Inventory Management. Credit card and pharmacy receivables of \$48mm per 1/23 Rolling DIP Budget. Assumes \$11.00/Script Pharmacy Asset Valuation, Mitigating Item of increase to \$13.00/Script for 3.3mm Scripts
- (2) Pipeline initiatives of \$34mm relate to \$15mm of Operating Receipts, \$10mm of Operating Disbursements, \$9mm of Amazon Inventory; in addition, the Company is forecasting cash available at close of \$32mm, which could potentially offset any DIP shortfall
- (A) In the event the Company delivers less than the target amount for these items, there will be a dollar for dollar reduction in ESL's obligation to first assume Severance liabilities, then 503(b)(9) claims. To the extent the Company delivers excess Prepaid Inventory or Warranty Receivables at close, this excess amount can be used to offset any shortfall in the other dollar for dollar.
- (B) Updated to reflect 1/31/19 estimate from SHC Accounting

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Opportunity and Actions

	Identified Favorable Variance	Identified Opportunity	Potential Actions	Responsible Parties	Comments
RX Scripts	\$12mm	\$3mm	Script Appraisal	Rob Riecker Brian Griffith	Currently estimated at \$11.00/script, opportunity to increase to \$13.00/script
Inventory	NA	\$50mm	Sale of excess inventory Transfer to GOB Reduce or cancel P.O.s Increase receiving days to 6 days per week	TJ Koreis Brian Griffith Chris Good	Inventory potentially higher in DIP budget than target
Specified Receivables	NA	\$20mm	Negotiate credit balance down with vendors or convert to cash	Trent Bonnell Jon Boffi Chris Good Bob Phelan	Convert A/R to cash to the extent above required target Use 503(b)(9) negotiation to reduce A/R credits Look at timing of SHO, Citi and other AR payments
503(b)(9)	NA	\$5mm	Prioritize based on trapped vendor credits Mitigate through vendor cures	Trent Bonnell Enrique Acevedo	Use critical vendor payments to reduce 503(b)(9) liability Potential to use A/R credits to offset balances
Accounts Payable	NA	NA	Maintain current AP (\$169mm)	Jeff Butz Chris Good	Manage down disputed payables and reduce non-essential spend Look at cash prepetition cash deposits with vendors
Property Tax	NA	NA	Active management of property taxes	Mike Morrie Brian Griffith	Property-by-property review of tax liability in process; updated view by mid-week ending 1/25/19
Prepaid and Other Assets	NA	NA	Monetization of any additional assets	Chris Good Jon Boffi	Prepaid and other assets on the balance sheet not identified in APA
Cash	NA	NA	Company Cash Excess Store Cash	Rajat Prakash Chris Good Naren Sinha	Cash in-transit, in regional banks and stores; ESL will pay for a maximum of \$17mm in store cash
Senior DIP Balance	\$40mm	\$34mm	Operating Receipts (\$15mm) Operating Disbursement (\$10mm) Amazon Inventory (\$9mm)	Rob Riecker Naren Sinha Rajat Prakash Bob Walsh Brian Griffith Wesley Sima TJ Koreis	Actively managing operating disbursements and potential conservatism in SG&A forecast, as well as receipt outperformance
	NA	\$35mm	Holback Receivables (\$35mm)	Mo Meghji	Credit card holdback release Look at other holdback release opportunities

EXHIBIT B

From: [Munz, Naomi](#)
To: [O'Reilly, Benet J.](#); [Allen, Charles W.](#)
Cc: [Project Blue Sasset M&A](#)
Subject: Closing figures
Date: Sunday, February 10, 2019 10:28:32 PM
Attachments: [190210 - Final Closing Inventory and Receivables Tracker.pdf](#)

See attached, as discussed.

From: O'Reilly, Benet J. <boreilly@cgsh.com>
Sent: Sunday, February 10, 2019 11:08 PM
To: Munz, Naomi <Naomi.Munz@weil.com>
Cc: Allen, Charles W. <callen@cgsh.com>
Subject: RE: closing figures

Can we have a group call now to discuss? We need the borrowing base finalized right now or we are missing tomorrow, and the proposal you suggested won't work.

Who should we include on the call? We will have Kunal, Moelis and Charlie and I.

Benet J. O'Reilly
Cleary Gottlieb Steen & Hamilton LLP
Assistant: srodriguez-feliciano@cgsh.com
One Liberty Plaza, New York NY 10006
T: +1 212 225 2746 | F: +1 212 225 3999 | M: +1 917 916 5500
boreilly@cgsh.com | clearygottlieb.com

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Value under Article X, Section 10.9

(\$ in Millions)

(Tracker as of February 10, 2019)

Borrowing Base Start Date for Roll-Forward

2/2/2019

Inventory as of 2/10/19

	<u>Beginning</u>	<u>Receipts</u>	<u>COGS</u>	<u>Ending</u>
Total Stock Ledger Inventory as of February 2, 2019				\$1,637
Total Inventory Receipts and COGS on February 3, 2019	1,637	4	(10)	1,631
Total Inventory Receipts and COGS on February 4, 2019	1,631	7	(8)	1,630
Total Inventory Receipts and COGS on February 5, 2019	1,630	7	(8)	1,628
Total Inventory Receipts and COGS on February 6, 2019	1,628	7	(8)	1,628
Total Inventory Receipts and COGS on February 7, 2019	1,628	11	(8)	1,631
Total Inventory Receipts and COGS on February 8, 2019	1,631	5	(9)	1,627
Total Inventory Receipts and COGS on February 9, 2019	1,627	0	(13)	1,615
Total Inventory Receipts and COGS on February 10, 2019	1,615	4	(9)	\$1,609
Less: Remaining GOB Inventory:				(\$62)
Plus: Amazon Inventory				9
Adj. Total Stock Ledger Inventory as of February 10, 2019:				\$1,557

Est. Credit Card Receivables as of 2/10/19

	<u>Ending</u>
First Data Receivables	\$101
Amex Receivables	9
Discover Receivables	4
Citi Receivables	1
Adjustment for Unposted Transactions	(55)
Total Credit Card Receivables	\$60

Pharmacy Receivables as of 2/8/19

Pharmacy Receivables	\$11
Pharmacy Scripts	37
Total Pharmacy Receivables	\$47

Summary - Total Value under Article X

Deliverable Value under Article X, Section 10.9	\$1,664
Closing Threshold	\$1,657
<i>Cushion / (Gap)</i>	7

EXHIBIT C

From: O'Reilly, Benet J.
To: Odoner, Ellen
Cc: Munz, Naomi; Allen, Charles W.; Project Blue Sasset M&A
Subject: RE: Closing figures
Date: Monday, February 11, 2019 1:08:29 AM

I don't think we want to change the APA amendment, especially if it is a change to the closing condition (which will require bank approval, etc.). I view this as an agreement for us to swap \$7M of prepaid in-transit inventory for \$7M of prepaid inventory that is not yet in transit, and think we can document in a sideletter, or between emails between counsel. We can reflect that at closing.

In terms of timing, our understanding is that there will be operational calls beginning at 8 am tomorrow to work through the final pieces to make sure things are set up for closing. These calls will largely be lead by the bank operational folks, and will involve the company. Once those calls have occurred (and assuming everything is set and buyer is prepared to close), we will reach out to schedule a closing call.

Benet J. O'Reilly
Cleary Gottlieb Steen & Hamilton LLP
Assistant: srodriguez-feliciano@cgsh.com
One Liberty Plaza, New York NY 10006
T: +1 212 225 2746 | F: +1 212 225 3999 | M: +1 917 916 5500
boreilly@cgsh.com | clearygottlieb.com

From: Odoner, Ellen [mailto:ellen.odoner@weil.com]
Sent: Monday, February 11, 2019 2:01 AM
To: O'Reilly, Benet J. <boreilly@cgsh.com>
Cc: Munz, Naomi <Naomi.Munz@weil.com>; Allen, Charles W. <callen@cgsh.com>; Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: Re: Closing figures

Ok good. Would it be ok to insert those words into Naomi's proposed amendment of 10.9 (which I think is neatest) or how else would you like to reflect?

Sent from my iPhone

On Feb 11, 2019, at 1:51 AM, O'Reilly, Benet J. <boreilly@cgsh.com> wrote:

Okay – Moelis has confirmed your understanding.

Benet J. O'Reilly
Cleary Gottlieb Steen & Hamilton LLP
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boreilly@cgsh.com | clearygottlieb.com

From: Odoner, Ellen [<mailto:ellen.odoner@weil.com>]
Sent: Monday, February 11, 2019 1:34 AM
To: O'Reilly, Benet J. <boreilly@cgsh.com>; Munz, Naomi <Naomi.Munz@weil.com>;
Allen, Charles W. <callen@cgsh.com>
Cc: Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: RE: Closing figures

This crossed with Naomi's but is to the same effect.

From: Odoner, Ellen <ellen.odoner@weil.com>
Sent: Monday, February 11, 2019 1:32 AM
To: O'Reilly, Benet J. <boreilly@cgsh.com>; Munz, Naomi <Naomi.Munz@weil.com>;
Allen, Charles W. <callen@cgsh.com>
Cc: Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: RE: Closing figures

We understand that M-III has discussed with Moelis that this is not the right description. We understand the two agree; please touch base with Moelis. Our understanding of the arrangement is that the \$7 million will come from inventory that has been paid for by Sears before the Closing Date but as to which Sears has not yet taken title or delivery.

From: O'Reilly, Benet J. <boreilly@cgsh.com>
Sent: Monday, February 11, 2019 1:16 AM
To: Munz, Naomi <Naomi.Munz@weil.com>; Allen, Charles W. <callen@cgsh.com>
Cc: Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: RE: Closing figures

I would rather not change the agreement, as I've learned that we do not always understand what you think these terms mean.

We can agree that we will reduce the Inventory by directing \$7M of "Inventory paid for in advance of shipment" to a GOB Leased Store or GOB Owned Store, as requested by Sellers.

Benet J. O'Reilly
Cleary Gottlieb Steen & Hamilton LLP
Assistant: srodriguez-feliciano@cgsh.com
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boreilly@cgsh.com | clearygottlieb.com

From: Munz, Naomi [<mailto:Naomi.Munz@weil.com>]
Sent: Monday, February 11, 2019 1:08 AM
To: O'Reilly, Benet J. <boreilly@cgsh.com>; Allen, Charles W. <callen@cgsh.com>

Cc: Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: RE: Closing figures

Benet and Charlie

To confirm – we understood that in exchange for the “excess” to the \$1657M being delivered at closing, the estate will receive Prepaid Inventory (i.e., inventory which has been ordered and paid for but not yet delivered). As mentioned on the phone, this agreement is subject to this being the last issue to resolve (other than mechanics) before losing tomorrow. Below is a revised version of Section 10.9 intended to reflect the arrangement.

Section 10.9 Inventory and Receivables. The aggregate amount of (i) the Inventory Value of the Acquired Inventory (excluding any Pending Inventory), (ii) the amounts due to Seller with respect to (A) the Credit Card Accounts Receivable and (iii) the Pharmacy Receivables shall be at least \$1,657,000,000. To the extent that the aggregate amount of items (i) through (iii) in the foregoing sentence exceeds \$1,657,000,000 on the Closing Date, Sellers may reduce such amount to be equal to \$1,657,000,000 by first, with respect to the first \$7,000,000 of such excess, accepting Prepaid Inventory that would otherwise be Acquired Inventory (in an amount of \$7,000,000) and directing that it be delivered to a GOB Leased Store or a GOB Owned Store or any other location designated by Sellers that is not a Property, second, transferring (at Sellers' expense and in consultation with Buyer) Inventory that would otherwise be Acquired Inventory to a GOB Leased Store or a GOB Owned Store or any other location designated by Sellers that is not a Property, until the Inventory Value of the Acquired Inventory is equal to \$1,553,000,000 and secondthird, retaining as an Excluded Asset the oldest of any Credit Card Accounts Receivable or Pharmacy Receivables.

From: O'Reilly, Benet J. <boreilly@cgsh.com>
Sent: Sunday, February 10, 2019 11:37 PM
To: Munz, Naomi <Naomi.Munz@weil.com>; Allen, Charles W. <callen@cgsh.com>
Cc: Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: RE: Closing figures

Thanks. As discussed, we would reduce the inventory by \$7M of “Inventory paid for in advance of shipment” to make the numbers hit.

Cullen will be separately reaching out with the info he needs to finalize the borrowing base certificate.

Benet J. O'Reilly

Cleary Gottlieb Steen & Hamilton LLP
Assistant: srodriguez-feliciano@cgsh.com
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From: Munz, Naomi [<mailto:Naomi.Munz@weil.com>]
Sent: Sunday, February 10, 2019 11:28 PM
To: O'Reilly, Benet J. <boreilly@cgsh.com>; Allen, Charles W. <callen@cgsh.com>
Cc: Project Blue Sasset M&A <ProjectBlueSassetM&A@weil.com>
Subject: Closing figures

See attached, as discussed.

From: O'Reilly, Benet J. <boreilly@cgsh.com>
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To: Munz, Naomi <Naomi.Munz@weil.com>
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Subject: RE: closing figures

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Who should we include on the call? We will have Kunal, Moelis and Charlie and I.

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